

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV 2024-404-2384
[2025] NZHC 1104

UNDER the Judicial Review Procedure Act 2016

IN THE MATTER OF Sections 95A-95E of the Resource Management Act 1991 in relation to an application to review a statutory decision to publicly notify an application for resource consent

BETWEEN LONG RIVER INVESTMENTS CORPORATION LIMITED
Plaintiff

AND AUCKLAND COUNCIL
Defendant

Hearing: 18 February 2025

Appearances: J P Nolan and P H Mulligan for the Plaintiff
S Quinn for the Defendant

Judgment: 8 May 2025

JUDGMENT OF HARVEY J

*This judgment is delivered by me on 8 May 2025 at 4pm,
pursuant to r 11.5 of the High Court Rules.*

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Deputy Registrar

Solicitors:
K3 Legal, Auckland
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Counsel:
Pat Mulligan, Auckland

Introduction

[1] Long River Investments Corp Ltd owns land on which the Gulf Harbour Golf Course and Country Club is located. In November 2023, Long River applied for a subdivision consent of a boundary adjustment. Auckland Council notified the application claiming that special circumstances justified public notice.¹ In arriving at its decision, the Council took account of Long River’s future development plans for the land. Long River disagrees with that approach and seeks judicial review of that decision, arguing that it was illegal, unreasonable and unfair.

[2] The Council rejects Long River’s claims and argues the commissioner’s decision to publicly notify the application was valid, the correct legal framework was applied, there was no error of fact or law, and a robust process was followed. The Council contended that public notice due to special circumstances was justified, or was at least not so unreasonable that it amounts to a reviewable error.

[3] The principal issues for determination are:

- (a) Did the commissioner take account of an irrelevant consideration, or otherwise reach an unreasonable decision, by considering Long River’s future plans?
- (b) Did the commissioner provide sufficient reasons for her decision?
- (c) Was there procedural unfairness in the Council’s approach to proceed with notification rather than invoking ss 91 or 92 of the Resource Management Act 1991?

Background

[4] Long River’s application sought to reorganise their land into two new titles. The land is almost exclusively subject to an “Open Space — Sport and Active Recreation” (SAR) zoning. This restricts its use to recreational activity, which means that a non-complying resource consent is required for any commercial development.

¹ Resource Management Act 1991, s 95A(9).

The land is also encumbered by a restriction limiting its use to that of a golf course and country club, alongside some collateral activities.

[5] Long River claimed the proposed boundary adjustment is the first step in long-term plans to rationalise and reorganise the golf course. These future plans involve selling one of the new titles following the boundary adjustment and using the proceeds to reconfigure the golf course on the remaining land. Long River would also purchase additional adjacent land for the golf course. Nonetheless, the boundary adjustment application did not seek to establish any new activities on the land, which would have required further applications.

[6] The Council accepted the application for processing under s 88 and was required to decide whether the application should be notified or proceed on a non-notified basis. If publicly notified, the application would be open to public submissions and those submitters would possess various rights, including appeal rights. If processed on a non-notified basis, the application would proceed without any public input nor rights of appeal.

The processing planner's report

[7] A processing planner, when considering the application, found that special circumstances in favour of public notification existed for two reasons. First, the high level of public interest, which was outside the common run of interest shown in an application for a boundary adjustment subdivision. Second, the unusual planning history of the site which resulted in an encumbrance designed to retain the amenity value provided by the golf course and open space. These two circumstances were linked because the key public concern was whether the boundary adjustment would compromise the integrity of the encumbrance. Together, the encumbrance and the public interest in its integrity was thus outside the common run of circumstances.²

[8] Even so, the processing planner found that these special circumstances did not justify notification. She considered the high public interest in the application

² See *Urban Auckland, Society for the Protection of Auckland City and Waterfront Inc v Auckland Council* [2015] NZHC 1382, [2015] NZRMA 235.

concerned the possible future use of land, despite the fact that the application would not change the use activities of the land under its SAR zoning or the encumbrance. Any public submissions would, in her view, be on these issues rather than the boundary adjustment. She therefore concluded that the notification would be unlikely to result in the receipt of further information that would better inform the consent decision. In essence, the processing planner concluded that there was:

... sufficient understanding of the proposed boundary adjustment subdivision and the effects it is likely to generate so that the notification of the application would not elicit additional information relevant to the Council's assessment of this boundary adjustment under the AUP and section 104 of the RMA.

[9] Further, she noted that any change of the land's use would require the discharge of the encumbrance and the submittal of applications for either a resource consent or plan change. Those applications would be subject to notification tests and processes which would provide for public input. Whereas the proposed boundary adjustment would not prevent current or future owners from complying with the encumbrance or zoning requirements. In summary, the processing planner's report confirmed that the proposal would not result in adverse effects that were more than minor. It concluded that although there were special circumstances, these did not justify notification. The report recommended that the application be granted on a non-notified basis.

The commissioner's decision

[10] The processing planner's report was then given to a consultant planner who had the Council's delegated authority to act as an independent commissioner to make the notification decision. The commissioner began by confirming she had read the documents, information and correspondence listed in appendix A to her decision. These included the application and other relevant documents including the processing planner's report and the materials relied on for that report. The decision also confirmed that, alongside the documents available to her, the commissioner attended a site visit on 12 March 2024. Before considering the existence of special circumstances, the commissioner also found that there were no adverse effects on the environment that were more than minor.

[11] Turning to s 95A(9), and again agreeing with the processing planner's report, the commissioner found that:

The history of the site and its establishment, its majority zoning ... , and the existence of [the encumbrance] ... is unusual. This unusual circumstance, coupled with the high level of public interest, which is out of the common run of interest for a boundary adjustment application, results in special circumstances and these circumstances warrant and/or make public notification desirable.

[12] Disagreeing with the processing planner, the commissioner found that these special circumstances warranted public notification:

While the proposal is for a boundary adjustment subdivision and does not propose any physical works, it is, as stated in the Applicant's AEE, the first step in the golf course redevelopment, with the areas north of Gulf Harbour Drive (new title 1) to be sold to fund the redevelopment over a more sustainable footprint. In this regard, it is not clear whether the adjusted size of [new title 2] will enable the on-going use of the land as a golf course and country club as required by [the encumbrance] or provide the level of amenity envisaged for the area.

[13] If New Title 1 was sold, the land available for Long River's golf course would reduce from 90 to approximately 51 hectares, and the commissioner recorded that Long River's AEE stated:

Due to the shape of the land available within New Title 2, it will not be possible to consolidate an 18 hole course routing within that remaining 51.3968 ha. As such, contracts to purchase further coastal land adjacent to the existing golf course on Daisy Burrell Drive ... are in place.

[14] However, the commissioner, like the processing planner, questioned this by noting:

No copies of the above-mentioned contracts for purchase are provided with the application. Additionally, the Council's s95 report advises that resource consents have been granted for the residential development of [Daisy Burrell Drive] and that works may have commenced on the site, therefore calling into question the ability to purchase and use this land as the applicant suggests.

[15] Accordingly, due to these special circumstances, the commissioner decided the application should proceed on a publicly notified basis.

Did the commissioner take account of an irrelevant consideration, or otherwise reach an unreasonable decision, by considering Long River’s future plans?

Long River’s submissions

[16] Mr Mulligan submitted that the commissioner improperly considered Long River’s future plans in assessing the boundary adjustment application. Counsel contended this amounted to taking account of an irrelevant consideration or resulted in an unreasonable decision. Mr Mulligan argued that the commissioner inappropriately relied on high public interest in the application despite the fact that this interest, in his submission, was not in the application *per se* but instead in Long River’s future plans and the integrity of the encumbrance. Counsel also submitted that the perceived flaws in Long River’s future plans, which may affect the land available for golfing and amenity, were not relevant to the application itself which — in contrast to the future plans — could not give rise to any such impacts.

[17] Mr Mulligan contended that the commissioner avoided engaging with this issue, which was the focus of the processing planner’s report: namely, whether public interest concerned the application or the future plans. In addition, counsel contended that the commissioner failed to properly consider whether notification would elicit further information relevant to the application. Mr Mulligan argued that the lack of specific analysis on this point confirmed that the commissioner failed to turn her mind to these key matters or, if she did, that her reasoning was deficient.

[18] Instead, counsel submitted that the commissioner’s analysis appears to rely on the boundary adjustment being a “first step”, which she then treated as giving her a mandate to assess the bona fides of the future plans. The commissioner’s assessment then assumed that the sale of New Title 1 will be perfected resulting in only the balance of the land (i.e. New Title 2) being restricted by the encumbrance or the open space zoning. The commissioner then discounted the potential for the purchase of additional land at Daisy Burrell Drive to add to the total land available for recreational purposes.

[19] In opposition to this approach, Mr Mulligan contended that the fact the boundary adjustment is a “first step” does not create a sufficient planning relationship between the application and Long River’s future plans to be a special circumstance

justifying notification. Unlike other cases, there is no suggestion that the effects or implications of the boundary adjustment will fall to be unconsidered between the various necessary applications. He argued there were no overlapping or cumulative effects of the application which would be at play when subsequent applications are considered.

[20] Counsel accepted that there are cases where the Court has decided it is appropriate to assess the effects of an activity that has not been applied for where it was considered to be a natural consequence of the application made. In *Pukenamu Estates*, this Court agreed that a future but not yet submitted proposal for an earthworks consent for road and building platforms could be taken account of when considering a 14-lot residential subdivision application.³ The Court held that:⁴

... to isolate one activity either the subdivision from the earthworks, or the earthworks from the subdivision will not accurately identify the actual and potential effects of the subdivisional activity on the land.

[21] Mr Mulligan emphasised that the effects of the earthworks in that case were before the Court and the applicant had accepted that, to a permitted level, they should be considered. The application included the road development but not all of the earthworks required. Finally, the applicant had conceded that the applications should have been adjourned under s 91 to allow them to be considered in an integrated way.

[22] In *Housiaux*, an application was made for “farm access” despite farm access already existing.⁵ Rather, the proposal would double the width of the existing access as it was expected this would form the access for a future 11-lot subdivision. The Court noted that where:⁶

... sequential applications are possible as part of a staged development and the question of notifying the first application is being considered, close attention should be paid to the scope of the application to ensure that its effects are accurately assessed. Should potential effects of the first application be incorrectly ascribed to a future application there is a risk that rights of objection will be rendered ineffective.

³ *Pukenamu Estates Ltd v Kapiti Environmental Action Inc* HC Wellington AP106/02, 1 July 2003.

⁴ At [52].

⁵ *Housiaux v Kapiti Coast District Council* [2004] ELHNZ 92 (HC).

⁶ At [31].

[23] This Court further stated that:⁷

The question is whether the future subdivision was a relevant consideration that had to be taken into account in relation to notification, having regard to the fact that the application to some extent anticipated a possible future subdivision. This question comes back to the scope of the application and its likely or potential effects on the environment or the applicant.

[24] The Court in *Housiaux* accepted that the effects of future plans might be considered “special circumstances” as the physical attributes of the accessway (its width and location) created a nexus between the current and future proposals. However, the Court concluded that any presumption created by that nexus was addressed by confirming the bona fides of the interim farm use.

[25] In *Urban Auckland*, the Ports of Auckland (POAL) applied to extend the eastern and western edges of the Bledisloe Wharf via four separate consent applications.⁸ As to special circumstances, the Court concluded Auckland Council had inappropriately constrained their consideration because of the applications’ subdivided approach (which they held to be artificial and to have led to material errors). Instead, the Court considered the essential question to be whether notification would lead to further relevant information. The Court confirmed that POAL’s future plans were special circumstances to be taken account of as the physical extension of the wharves would affect the assessment of future reclamation applications.

[26] In contrast to *Urban Auckland*, Mr Mulligan argued there is no planning nexus between granting Long River’s application and how any of their future requests might be considered. The commissioner failed to identify any effect of the application that could not be addressed in later requests. She also did not identify how granting the application would alter the environment within which future applications would be considered. Crucially, counsel submitted that changes in the land’s ownership would not alter the restrictions on the use of that land; i.e. the zoning and encumbrance would not be affected. Therefore, any future plans were irrelevant to Long River’s application, and should have instead been addressed when those future applications were made. By considering these plans when assessing the current application,

⁷ At [34].

⁸ *Urban Auckland*, above n 2.

Mr Mulligan contended that the commissioner took account of an irrelevant consideration.

[27] Counsel argued that the commissioner ignored various mandatory relevant considerations, including the extent to which public input could lawfully be taken account of when considering the application after public notification. In addition, Mr Mulligan referred to the delay, waste of resources and lack of utility of public notification if the resulting public input could not be taken into account.

The Council's submissions

[28] Mr Quinn highlighted that the commissioner's decision was made solely on the basis of special circumstances per s 95A(9). Unlike the effects notification thresholds, counsel submitted that special circumstances are subjective and discretionary in nature. There is no firm threshold that, once met, triggers notification based on special circumstances. However, once the decision-maker determines that special circumstances warranting notification exist, it must publicly notify that application.

[29] Mr Quinn contended that numerous decisions of this Court confirm that findings as to the existence or lack of special circumstances are largely judgment calls, with the experience from case law being that it can equally go both ways. He argued that there is a more limited scope for judicial review in this case. Mr Quinn submitted that this Court should be hesitant to intervene on a judgement call made by the commissioner than it may be in judicial reviews challenging more objective decision-making.

[30] Regarding the relevance of the future development plans, counsel contended that Long River's application would not have addressed the sustainability of the land's current use (the subdivision being a first step in achieving a financially viable golf course) and the site's consenting, encumbrance and zoning history, if these were not relevant factors.

[31] Mr Quinn argued that the approaches taken by the processing planner and the commissioner were both available, and that the difference between them was one of

opinion as to the significance of the special circumstances and their relevance in the context of the application. Counsel submitted that the commissioner's decision was correct and that notification would be useful because various matters relevant to the substantive decision-making could be informed from public notification, including:

- (a) the historical context and community values surrounding the golf course and its use;
- (b) guidance on what is considered to be "inappropriate" subdivision at this site;
- (c) whether the proposed boundary adjustment supports or enables a functional golf course at the site; and
- (d) whether the subdivision is consistent with the objectives and policies of the Auckland Unitary Plan (AUP).

[32] Mr Quinn contended that these matters align with the concerns identified in the commissioner's decision and, in contrast to Mr Mulligan, submitted that they are not about the effects of the future development of the site but are about the use of the golf course as a golf course before and after the subdivision.

[33] Counsel argued that the above information gleaned from public notification would be relevant to an assessment of the application under s 104. The Council is required to have regard to three matters. First, any actual and potential effects of the activity on the environment (which is not limited to effects that are minor or more than minor). Second, any relevant provisions of national environmental standards, regulations, national policy statements, the New Zealand Coastal Policy Statement, and the AUP. Third, any other matter considered to be relevant and reasonably necessary to determine the application.

[34] Mr Quinn submitted that not only can submitters provide evidence relevant to effects on the environment (which may show an error in the processing planner and commissioner's initial assessment or assumptions) but they can also address those

other s 104 matters the Council must assess. In this case, those other matters would include the policy framework, history of the site and the encumbrance.

Discussion

[35] This Court in *Coro Mainstreet (Inc) v Thames-Coromandel District Council* considered the judicial review of decisions related to resource consents, finding:⁹

It is not the function of the Court on an application for review to substitute its own decision for that of the consent authority. Nor, will the court assess the merits of the resource consent application or the decision on notification. The inquiry the Court undertakes on an application for review is confined to whether or not the consent authority exceeded its limited jurisdiction conferred by the Act. In practice the Court generally restricts its review to whether the Council as decision maker followed proper procedures, whether all relevant and no irrelevant considerations were taken into account, and whether the decision was manifestly reasonable. The Court has a discretion whether or not to grant relief even if it is persuaded that there is a reviewable error.

[36] It is not the role of this Court in reviewing the commissioner's decision to assess the merits of their notification decision. The sole issues to be determined in this part of the decision are whether the commissioner took an irrelevant consideration into account and whether the decision was manifestly unreasonable.

[37] Beginning with the issue of irrelevant considerations, in determining whether it was inappropriate for the commissioner to take Long River's future redevelopment plans into account, it is important to first clarify which specific plans the commissioner considered. The commissioner stated that the boundary adjustment was:

... the first step in the golf course redevelopment, with the areas to the north of Gulf Harbour Drive (new title 1) to be sold to fund the redevelopment over a more sustainable footprint.

...

The Applicant's AEE also states that:

... As such, contracts to purchase further coastal land adjacent to the existing golf course on Daisy Burrell Drive ... are in place.

⁹ *Coro Mainstreet (Inc) v Thames-Coromandel District Council* [2013] NZHC 1163, [2013] NZRMA 442 at [40]. Note also *Pring v Wanganui District Council* (1999) 5 ELRNZ 464 (CA) at [7] which notes that "Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine, but, of course, there must have been *some* material capable of supporting the decision."

[38] It is clear the commissioner considered Long River's plans to sell New Title 1 and to purchase additional land at Daisy Burrell Drive. Notably, the commissioner did not consider any future redevelopment plans requiring plan changes or resource consent applications. Neither the sale of New Title 1 nor the purchase of additional land would seemingly require any further application to the Council, let alone trigger a public notification process. However, the proposed sale could only occur if the proposed boundary adjustment application is granted.

[39] Both Long River and the commissioner appreciated that the sale of New Title 1 would leave both New Title 1 and New Title 2 with insufficient land to individually contain an 18-hole golf course. This is why it was considered necessary for Long River to purchase the additional land at Daisy Burrell Drive — the feasibility of which was challenged by both the processing planner and the commissioner. Although the subdivision would not permit the land under either new title to be used for other purposes, by enabling the sale of New Title 1 the boundary adjustment could make it more difficult for the land to be used for the intended purpose of the golf course and country club because operating an 18-hole golf course would require the consensus and cooperation of both owners to operate it across both New Titles 1 and 2. Accordingly, on a practical level, the boundary adjustment could risk undermining the viability of the encumbrance and, therefore, the amenity envisaged for the area.

[40] As in *Pukenamu Estates*, I consider that isolating the boundary adjustment from the intended sale of New Title 1 would not accurately identify the actual and potential effects of the boundary adjustment.¹⁰ In addition, much like the earthworks in *Pukenamu Estates*, the proposed sale has been placed before the Council and this Court through Long River's application.

[41] Further, by enabling the separation and sale of New Title 1, the boundary adjustment could significantly alter the circumstances in which any future plan change or resource consent application would be considered. For example, if it is not possible for the intended golf course to be operated across both New Titles 1 and 2 (for example, if the owners do not agree to operate a shared golf-course across both titles)

¹⁰ *Pukenamu Estates*, above n 3, at [52].

this would impact the assessment of whether the permitted use of the land should be amended or whether the encumbrance should be removed.¹¹ In this sense, it is analogous to *Urban Auckland* in that the boundary adjustment could have important effects on the future works in which the public has an interest, and accordingly, the public interest flows through into the boundary adjustment application.

[42] Thus, the effect or implication of the proposed boundary adjustment (in enabling the division and separate ownership of New Titles 1 and 2) may, if not considered in the present application, otherwise fall unconsidered between the applications needed for the overall redevelopment and rationalisation of the golf course. As identified in *Housiaux*, there is a risk that rights of objection will become ineffective if the ability to operate the golf course as intended is much diminished by the proposed boundary adjustment and the sale of New Title 1.¹² The separation and sale of New Title 1 would not arise from a possible future application but from the boundary adjustment which enables it. This contrasts with the future subdivision addressed in *Housiaux* which required its own resource consent. Even there the Court agreed the Council might have required public notification due to the case's special circumstances, and that it was within the Council's discretion to notify or not.¹³

[43] In this context, I consider there is a value to the public's input obtained through the notification process. First, the processing planner's summary of correspondence relating to this application specifically referred to the issue raised by one individual/group that:

Although the application does not ask for the removal of the encumbrance, subdivision and sale of one portion of the property invalidates the covenant over both portions as neither segment alone is sufficient for a golf course.

[44] Similarly, the more voluminous correspondence relating to changes to the encumbrance or the permitted use of the land is relevant to the present application because it may undermine the encumbrance and have significant impacts on future plan change or resource consent applications. Alternatively, it may speak to the public's views on the relative amenity of a smaller golf course restricted to New Title

¹¹ Although, the latter option would not necessarily take place under the RMA.

¹² *Housiaux*, above n 5, at [31].

¹³ At [47].

1 or 2 — i.e. if a shared golf course across New Titles 1 and 2 were not possible and additional land at Daisy Burrell Drive could not be obtained. There is also force in the observation by the Court in *Housiaux* that:¹⁴

... the Council should not lightly assume that interested persons have nothing to contribute to its assessment of the scope of the application and the applicant's claims regarding the proposed activity. If in doubt the Council should err in favour of notification or exercise its power under s 91 to defer the application until all applications have been made.

[45] For the reasons discussed (and noting the limited scope for judicial review of notification decisions, including those concerning “special circumstances” under s 95A(4)), I do not consider the commissioner took account of an irrelevant consideration by assessing Long River’s plans to sell New Title 1 and purchase land at Daisy Burrell Drive. The proposed boundary adjustment, by enabling the separation and sale of New Title 1, could have implications for the viability of the encumbrance and on future applications to alter the permitted use of the land. If not considered in the present application, these effects may otherwise fall in the gaps between applications and the public’s right of opposition could be rendered ineffective.

[46] Turning to consider the related ground of unreasonableness, for the same reasons as above, I do not consider the commissioner’s decision to have been unreasonable. The commissioner took into consideration a relevant factor when making its decision, which itself appears to be manifestly reasonable. Importantly, it is not the role of this Court to delve further into the substantive merits of the commissioner’s decision.¹⁵ Whether the commissioner provided sufficient reasons for her decision is considered in the next part of this judgment.

Did the commissioner provide sufficient reasons for her decision?

Long River’s submissions

[47] In an overlapping argument, Mr Mulligan submitted that the commissioner failed to provide cogent reasons for rejecting the processing planner’s approach to special circumstances and her distinction between the current application and Long

¹⁴ At [31].

¹⁵ See *Coro Mainstreet (Inc) v Thames-Coromandel District Council*, above n 9, at [40].

River's future plans. In this context, counsel contended that where there is compelling evidence for a contradictory approach, or if the rationale for the decision is unclear, then if cogent reasons for the decision are not given adverse inferences can be drawn about its legality or reasonableness. In addition, Mr Mulligan argued that the failure to provide cogent reasons could constitute its own basis for review on the grounds of procedural unfairness.

[48] Counsel submitted that the commissioner did not provide reasons addressing the key interrelated questions relevant to her approach, including:

- (a) What is meant by "first step" and how does that create a sufficient planning relationship between the application and the future redevelopment plans so as to warrant consideration of the future redevelopment plans?
- (b) How New Title 1 one would not remain as available for golfing and amenity as the land it encapsulates currently is?
- (c) How only New Title 2 would remain constrained by the encumbrance or zoning without acknowledging that this outcome could only occur after a substantial planning process and removal of the encumbrance on New Title 1?
- (d) How would an assumed sale of New Title 1 affect the encumbrance or zoning?
- (e) How the future redevelopment plans were circumstances that existed in relation to the application in terms of s 95A(9) or, even more broadly, how the future redevelopment plans related to the proposal as defined by the application process to date?
- (f) Could she conduct such an analysis, given it is highly speculative, because it involves judging risk from a future proposal only indicatively described in Long River's application and the processing planner's report, and which was not fully formed?

- (g) What would be the utility of notification, as suggested by the relevant precedent, and would decision-makers in a notified hearing be able to consider the future redevelopment plans?

[49] Counsel contended that, despite the processing planner setting out a conventional and unimpeachable approach, the commissioner disagreed without providing any reasonable or lawful explanation for her departure. Mr Mulligan argued that, at best, the decision can be treated as one with some valid but unstated justification, meaning its lawfulness cannot be evaluated. This, counsel submitted, would still be a breach of the Council's obligations of fairness and would render the decision fatally flawed. In essence, as an alternative to illegality or unreasonableness, Mr Mulligan contended that it was procedurally unfair not to provide clear reasoning on the central issue.

The Council's submissions

[50] Mr Quinn submitted that when the commissioner's decision is read as a whole it provides adequate reasons. First, the commissioner found that the history of the site, its establishment, its majority zoning and the existence of the encumbrance is unusual. That, coupled with the high level of public interest, results in special circumstances that warrant notification. Second, the commissioner noted the uncertainty as to the ongoing use of the land as a golf course and the required level of amenity should the subdivision be completed and on-sold. Third, the commissioner recorded the uncertainty as to Long River's ability to purchase other land in the area (as the application had proposed) given the factual reality in the area.

[51] Counsel contended that although Long River disagrees that these reasons justify public notification, they were well set out in the decision. In particular, Mr Quinn emphasised that there has been no allegation that the decision-maker misunderstood or mistook the scope of the activity proposed or the consent sought. Likewise, he underscored that there is no challenge to the legal framework applied or to the decision's findings in respect of the potential and actual adverse effects arising from the proposal. According to counsel, the challenge is limited to the decision's

findings as to special circumstances warranting notification, and the *relevance* of the future use of the site to that finding.

Discussion

[52] I agree with Mr Quinn that the commissioner's decision must be read as a whole. The overall reasons are clear:

- (a) There is unusually high public interest in the application and an unusual history of the site, including the encumbrance.
- (b) The proposed boundary adjustment is the first step in the golf course redevelopment, with New Title 1 to be sold.
- (c) The remaining land on New Title 2 may be insufficient to maintain the on-going use of the golf course and country club required by the encumbrance or to provide the level of amenity envisaged for the area.
- (d) The feasibility of Long River's plans to purchase additional land at Daisy Burrell Drive is unclear.

[53] Although the commissioner's decision did not expressly rebut the processing planner's reasoning, it provided sufficient and unique reasoning in of itself. Unlike the processing planner's discussion of notification under s 95A(9), the commissioner discussed Long River's plans to on-sell New Title 1 and explained that this could impact the encumbrance and the amenity envisaged for the area by reducing the land available to operate the golf course on New Title 2. Long River may disagree with the commissioner's reasoning on this point or consider that the reasons were insufficient. Nonetheless, reasons were provided such that the rationale behind the commissioner's decision was neither unclear nor arbitrary. I consider that this ground of review is not made out.

Was there procedural unfairness in the Council’s approach to proceed with notification rather than invoking ss 91 or 92 of the Act or both?

Long River’s submissions

[54] Mr Mulligan submitted that if the future redevelopment plans were considered relevant to the application, it was procedurally unfair that this was not referred back to Long River under ss 91 and 92 rather than proceeding with public notification. Counsel contended that throughout the process there were no indications that the application and future redevelopment plans were not mutually exclusive. The Council sought no further information about those future plans, and there was no indication that the Council had considered applying s 91 to require an integrated assessment of the application and the future redevelopment plans.

[55] Mr Mulligan argued that had the Council wished to embark on an evaluation of Long River’s future plans, where there was no obvious link between those and the application, as a minimum it should have sought further information to ensure its assessment was not speculative. This was one path, within the statutory framework of the Act, that the Council could have more reasonably pursued to address concerns about the future redevelopment plans than proceeding with notification on the basis of the reasons given.

The Council’s submissions

[56] Mr Quinn accepted that the Council has not sought to put the subdivision consent on hold under s 91 pending further consents being sought. However, it could still do so. Section 91 can be utilised before or after notification of an application. Counsel contended the fact that it has not yet done so is irrelevant. The same is true, he argued, of s 92 requests — which can also be made before or after a notification decision is made.¹⁶

¹⁶ Mr Quinn also argued that information as to Long River’s future redevelopment plans were already before the Council and the commissioner as part of the application material. Therefore, there was also no need to issue a s 92 request. However, he noted that this does not prevent the Council from issuing a s 92 request in future or raising the issue through its s 42A report.

[57] Mr Quinn acknowledged the commissioner was required to have “adequate information” when making her notification decision. However, counsel contended the information the commissioner had was clearly more than adequate (see above at [10]), including public correspondence from interested parties. In addition, Mr Quinn submitted that the issues raised by this correspondence — the public interest and concern over the proposed future use of the site and the enforceability of the encumbrance — were known to Long River and acknowledged in its application. Counsel emphasised that it is the notification process itself that provides an opportunity for Long River to respond to the substantive issues raised by third parties.

Discussion

[58] As noted, the commissioner’s concern was about the sale of New Title 1, not the totality of Long River’s future development plans. This sale would seemingly not require further resource consent applications. It is not clear there would have been other necessary and relevant resource consents as envisaged by s 91(1)(a). In which case, the Council’s decision not to invoke s 91 does not appear procedurally unfair nor manifestly unreasonable.

[59] In addition, I do not consider it to have been procedurally unfair for the Council to proceed with its notification decision without obtaining further evidence under s 92. The commissioner had adequate information supplied by Long River and the public, and as analysed by the processing planner, regarding the proposed boundary adjustment and relevant future plans. In particular, Long River explained its intention to sell New Title 1 as part of its application. Although the Council could certainly have exercised its discretion under s 92 to seek further information about this proposal, I do not consider the Council’s decision to proceed with public notification without such additional information to be sufficient grounds for review.

[60] All future plans are, by their very nature, somewhat speculative but this does not create a presumption *requiring* the use of s 92 where a Council otherwise possesses adequate information on the proposal. Further, I agree with Mr Quinn that the notification process itself provides Long River with the opportunity to respond to the

substantive issues raised regarding its future plans. This ground of judicial review has also not been made out.

Decision

[61] For the reasons given above, the application for judicial review is declined.

[62] Counsel may exchange costs memoranda within one month.

Harvey J